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SUBROGATION: A REMEDY OR RELIEF?

INTRODUCTION

The right of subrogation is derived from the contract of guarantee. Section 140 of the Indian Contract Act, 1872, grants the right of subrogation, which means that the guarantor assumes the role of the creditor and gets all the rights that a creditor may have against the principal debtor after the latter has settled his debt. A legal principle known as subrogation enables one party to assume the role of another and pursue a claim or right that the first party originally held. This idea, which has its roots in both equity and common law, acts as a check on injustice, upholds the law, and guards against unfair enrichment. The Latin word “subrogare”; which meaning to substitute, is where the word “subrogation”; originates. Essentially, subrogation gives one person (the subrogee) the ability to legally represent another (the subrogor) and assert the latter’s rights and remedies. With roots in Roman law, the idea of subrogation has been recognised historically by a number of legal systems. When a third party paid off another’s debt and requested to be subrogated to the creditor’s rights, subrogation was employed in Roman law. Subrogation may take place by effect of law¹. The act of replacing one party in a legal proceeding with another is known as subrogation. Subrogation basically gives a third party the legal authority to collect damages or adebt on behalf of another party. In the insurance industry, subrogation typically involves three parties: the policymaker (the insured party), the insurer (the insurance company), and the person liable for the losses.

The subrogation principle is said to be mostly applied in the insurance industry. An insurance company can sue the person responsible for the harm to recoup the full amount of the insurance claim that was paid to the insured client through subrogation. Keep in mind that the insurance

¹Vol. XXII Louisiana Law Review 226 George M. Snellings III

company represents the insured client's interests in these circumstances. Put differently, subrogation serves as the insurance company's remedy for a paid-out claim. In most cases, contracts between the insurance company and the covered party specify the subrogation right. Certain contracts may include unique provisions granting the insurance company the authority to begin the process of collecting the insurance claim payment from the person responsible for the insured party's damages.

DOCTRINE OF SUBROGATION

The subrogation doctrine is most frequently observed in contracts pertaining to sureties and insurance. The fundamental idea in each case is that, in accordance with the law, the other party bears primary responsibility for a payment made by a specific individual on an obligation. In other words, the payment maker is subrogated to the claims of the individual to whom they made the payment with regard to any claims or remedies that may be pursued against the party who bears primary responsibility. A legal notion known as subrogation allows one person to remove another's creditor's rights against their debtor. The right of subrogation typically emerges under two circumstances: either it does so naturally as a matter of fact or it does so as a result of contract law². The doctrine of subrogation typically surfaces in insurance-related contracts. As a legal matter, subrogation is more expansive and commonly referred to as unjust enrichment³. In the *Morgan v. Seymore*⁴ case, it was decided that a surety who fulfilled the principal's responsibilities covered by his guarantee might assume the role of the creditor and exercise all of the creditor's rights against the principal. As a result, this right is equitable. It is in fact a right that arises out of the relationship between surety and creditor itself. According to the subrogation concept, the insurer is entitled to the benefit of these rights against third parties with respect to the loss for which it has been compensated.

CONCLUSION

To sum up, subrogation is a flexible legal idea that can be used in a variety of legal situations as a relief as well as a remedy. Subrogation enables a party that has paid off debt or obligation on behalf of another to assume the role of the person to whom the payment was made, whether in

² The doctrine of substitution, <http://www.allens.com.au>

³ Subrogation, scholar.valpo.edu/

⁴ 1881 ILR 6 Cal 633

contracts, insurance, or real estate. Subrogation is a useful technique for obtaining restitution and avoiding unjust enrichment, but it has drawbacks and complications. The complex field of subrogation is influenced by statutory constraints, waiver agreements, priority concerns, and equitable considerations. Because subrogation embodies both legal and equitable principles, its dual nature is reflected in its dualism as a remedy and relief. Subrogation is essentially a remedy since it gives the subrogee a way to legally pursue the subrogor's rights against a third party. To keep the scales of justice in check and make those who commit wrongdoings answerable for their deeds, this judicial remedy is indispensable. In addition, subrogation serves as a relief mechanism by assigning blame, avoiding double recovery, and maintaining the indemnity concept. These relief-focused features guarantee that the person at fault bears the financial burden of the loss and that the insured is not unfairly rewarded. Subrogation is a complex legal idea that balances the conflicting interests of the parties involved at the junction of remedy and relief.

The idea of subrogation will probably change as legal systems meet new problems and circumstances. Whether through legislative changes, court decisions, or developments in contractual practices, the role of subrogation in the legal landscape will remain a dynamic and essential aspect of ensuring fairness, accountability, and efficiency in the resolution of legal disputes.